

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

J.W., A MINOR CHILD, AND WONITA
SCOTT AND DONALD WHITE,
INDIVIDUALLY AND ON BEHALF OF
THEIR MINOR SON, J.W.,

Plaintiffs,

vs.

FINNEYTOWN LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION,

and

DARLA FIEDELDEY, INDIVIDUALLY
AND IN HER FORMER OFFICIAL
CAPACITY AS KINDERGARTEN
TEACHER AT BRENT ELEMENTARY
SCHOOL

and

LANA GERBER, INDIVIDUALLY AND
IN HER FORMER OFFICIAL
CAPACITY AS PRINCIPAL OF BRENT
ELEMENTARY SCHOOL, AND
BUILDING COMPLIANCE OFFICER
FOR 504/ADA

Defendants.

: Case No.

: Judge

: Magistrate

:

:

:

:

**COMPLAINT AND
JURY DEMAND**

Nature of Action

1. J.W., a minor child with disabilities, and his parents, Wonita Scott and Donald White, bring this action against the Finneytown Local School District Board of Education (“Finneytown”) for redress of violations of the plaintiffs’ rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (“Section 504”), Title II of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq. (“ADA”), the Civil Rights Act of

1871, 42 U.S.C. 1983, (“Section 1983”), the Ohio Constitution, the United States Constitution, and the common law of Ohio. With deliberate indifference. Finneytown knowingly, intentionally, and unlawfully deprived J.W. of his right to timely equal access to education, his right to special education individualized to meet his needs, and his right to be free from physical assault by Finneytown administrators and educators acting under color of law and pursuant to de facto established policies and procedures within the School District. The defendants Darla Fiedeldey (“Fiedeldey”) and Lana Gerber (“Gerber”) further violated J.W.’s clearly established constitutional rights to personal security under the Fourth and Fourteenth Amendments to the U.S. Constitution by subjecting J.W. to acts of physical violence as punishment for the manifestations of his disabilities, and in retribution for his parents’ complaints about that abuse. The plaintiffs seek monetary damages for the injuries suffered by J.W. and his parents caused by the defendants’ conduct.

2. The United States Supreme Court recognizes the overlap in coverage between the Individuals with Disabilities Act (“IDEA”), 20 U.S.C. 1415, *et. seq.*, and other federal statutes protecting children with disabilities, such as Section 504 and the ADA. In *Fry v. Napoleon Community Schools*, 137 S. Ct. 743, the Supreme Court held, “In short, the IDEA guarantees individually tailored educational services, while Title II [of the ADA] and §504 promise nondiscriminatory access to public institutions. That is not to deny some overlap in coverage. The same conduct may violate all three statutes [IDEA, §504, ADA].” The same conduct may also violate constitutional rights and state law.

3. Instead of providing J.W. with special education and related services, Finneytown disciplined J.W., physically abused J.W., and otherwise abused and neglected J.W.’s individualized educational needs.

Jurisdiction and Venue

4. This action arises under Section 504, the ADA, 42 U.S.C. 1983, and state law. This Court has original jurisdiction over the plaintiffs' federal claims pursuant to 28 U.S.C. 1331 and 1343, and supplemental jurisdiction over the plaintiffs' state law claims pursuant to 28 U.S.C. 1367. Venue is proper pursuant to 28 U.S.C. 1391(b) because the events and omissions giving rise to the plaintiffs' claims all occurred within this judicial district.

Parties

5. Plaintiff J.W. is now an 8-year old child with special needs who resides within the Finneytown Local School District in Hamilton County, Ohio, with his mother, plaintiff Wonita Scott.

6. Plaintiffs Wonita Scott and Donald White are the natural parents of J.W., who both reside in Hamilton County, Ohio.

7. The defendant Finneytown is a public entity acting under color of law and responsible for the formulation and implementation of all official governmental laws, policies, regulations, and procedures for the education of students within the school district. Finneytown receives federal financial assistance within the meaning of 20 U.S.C. 1687.

8. The defendant Fiedeldey is, on information and belief, a resident of Hamilton County, Ohio. Fiedeldey was formerly J.W.'s kindergarten teacher during the 2016-2017 school year, and the first part of the 2017-2019 school year, until the initial events giving rise to this action occurred in October, 2017.

9. The defendant Gerber was formerly, on information and belief, a resident of Hamilton County, but may have since moved to an unknown address in the Toledo, Ohio area. Gerber was formerly Principal of Brent Elementary School within the Finneytown

Local School District, and also served as the Building Compliance Officer for 504/ADA for that school.

Statutory and Regulatory Background

10. The federal regulations implementing Section 504 emphasize that their purpose is to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance. 34 C.F.R. 104. A recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. 34 C.F.R. 104.33(a). The provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met. 34 C.F.R. 104.33(b).

11. Section 504 requires that school districts evaluate students with disabilities. 34 C.F.R. 104.35(a). Under Section 504, the school district must ensure that: (1) tests and other evaluation materials are validated for the specific purpose for which they are used, and administered by trained personnel; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need, and not just those designed to provide a general intelligence quotient; and (3) tests are selected and administered to ensure that, when administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the students aptitude and achievement levels, and not just the student's impaired sensory, manual, or speaking skills (except where those are

the skills that the test purports to measure). 34 C.F.R. 104.35(b).

12. Section 504 further requires:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34 (“A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person”). 34 C.F.R. 104.35(c). Section 504 requires that school districts must also reevaluate students. 34 C.F.R. 104.35(d).

13. The Americans with Disabilities Act is interpreted and applied in a functionally similar manner in this area of the law.

14. Under the IDEA, school districts are also responsible for providing children with disabilities a free appropriate public education (“FAPE”) beginning at 3-years old. A FAPE requires the provision of “specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, as well as transportation, developmental, corrective, and other supportive services required to ensure that the child benefits from that special education.

15. In order to ensure that children with disabilities receive an appropriate education tailored to their unique condition, the IDEA requires a school district to identify individual students who may have disabilities, assess those students for disabilities, and then provide an individualized education program (“IEP”) tailored for each disabled student, designed to meet that child’s special needs in providing the FAPE. A school

district's "child find" obligations include "[c]hildren who are suspected of being a child with a disability . . . even though they are advancing from grade to grade."

16. In this regard, the IDEA requires that when a school district is afforded reason to suspect that a child has a disability, it must "conduct a full and individual initial evaluation" that ensures the child is assessed for "all areas of suspected disability," using a variety of reliable and technically sound instruments. 20 U.S.C. §§1414(a)(1), (b)(2)-(3). Based on this evaluation and assessment for suspected disabilities, the school district must determine what special education and related services will best address the child's individual needs. These requirements similarly control school districts' obligations when conducting a disabled student's triennial evaluations.

17. That this evaluation is done early, thoroughly, and reliably is of extreme importance to the education of children. If it is not, many children with disabilities will go undiagnosed, neglected, or improperly treated in the classroom.

18. Furthermore, the IDEA and its accompanying federal regulations contain an extensive set of procedural requirements that are designed to ensure that this initial evaluation, and any subsequent reevaluation, achieves a complete result that can be reliably used to create an appropriate and individualized educational plan tailored to the needs of the child. First, the initial evaluation must be designed not only to determine whether the child has a disability, but also "to gather relevant functional, developmental, and academic information about the child," that can be used to determine the child's individual educational needs. The school district must "ensure that— . . . the child is assessed in all areas of suspected disability." Anything less would not provide a complete picture of the child's needs.

19. A local school district must also provide notice to the child's parents that describes "any evaluation procedures" that the district proposes to conduct, as well as why it has made those decisions. The statute further requires that in conducting the evaluation, school districts must: (1) use a variety of assessment tools and strategies without relying on any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; (2) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and (3) ensure that all assessments are conducted by trained and knowledgeable personnel, in accordance with instructions provided by the producer of the assessment, and for purposes for which the assessments or measures are valid and reliable.

20. Upon completion of this full and individual initial evaluation, or subsequent reevaluation, the school district must provide a copy of the evaluative report to the child's parents. If the parents disagree with the school district's evaluation of their child, they have the right to obtain an independent educational evaluation, or "IEE," at public expense.

21. The results of the initial evaluation are critical to the creation of an individualized education program (IEP). If done appropriately, the initial evaluation provides a complete picture of the child's specific academic, developmental, and functional needs. The IEP is a written document that states the child's present levels of academic achievement and functional performance, creates measurable annual goals for the child, describes the child's progress towards meeting those goals, and explains the services that will be provided to the child to help him advance toward attaining his particular goals. The IEP is created by the child's "IEP Team" after the team has considered the child's strengths,

the parents' concerns about the child's education, and the results of the school district's initial evaluation of the child.

22. IDEA also requires that parents be given formal, written notice whenever the school district intends to change or refuses to change the identification, evaluation, or educational placement of their child. That notice must not only describe the action proposed or refused by the school district, but also explain why the school district proposes or refuses to take the action, as well as the records or assessments the school district used as a basis for its decision.

23. This case does not raise direct claims under IDEA, and the plaintiffs do not seek monetary damages for physical harms, emotional distress, and other harms under IDEA. The plaintiffs understand that monetary damages are not available under IDEA. The plaintiffs seek monetary damages in this case solely under Section 504, the ADA, Section 1983, and the Ohio Constitution and common law. One type of Section 504 claim, and other non-IDEA claims, however, may arise from the same facts establishing a school district's violation of IDEA.

24. The IDEA requires that if a school district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability using the thorough and reliable procedures specified in the Act. A school district cannot circumvent that responsibility by way of informal observations, and nor can the subjective opinion of a staff member relieve the school district of its assessment obligations.

25. Finneytown was long aware that J.W. displayed signs of possible learning disabilities and abnormal behavior. Therefore, learning disabilities, social-emotional, and other needs were suspected disabilities for which Finneytown was required to assess J.W.

26. Finneytown chose, however, not to formally assess J.W. for suspected disabilities for informal, unscientific, and unlawful reasons.

27. Finneytown intentionally violated the IDEA's essential procedural requirement that it conduct an initial evaluation to assess a child "for all areas of suspected disabilities" when it failed to formally assess J.W.

28. Having failed in its obligation to assess J.W. for apparent or suspected disabilities, Finneytown further chose not to provide special education or other services to J.W. necessary for him to receive a FAPE. Finneytown chose not to provide even those special education or other services that it did determine J.W. needed in order for him to receive the FAPE to which he was entitled.

29. Finneytown chose not to provide such special education or services to J.W., also for informal, unscientific, and unlawful reasons.

30. The provision of a FAPE to a disabled child is impossible when a school district like Finneytown fails to obtain information that might show a child's disabilities. Finneytown made decisions without sufficient information about J.W.'s individual capabilities and needs.

32. Staff members at Finneytown's Brent Elementary School treated the manifestations of J.W.'s apparent disabilities as either inconsequential, or as misbehavior requiring disciplinary measures, up to and including physical abuse, rather than as triggering events for its duties to recognize, assess, and develop IEP or educational aids or services necessary to provide J.W. the FAPE to which he was entitled.

33. Finneytown's fundamental procedural violations denied J.W. a free appropriate public education, and deprived J.W.'s parents of critical evaluative information

about his developmental needs and abilities. That deprivation made it impossible for any IEP Team to consider and recommend appropriate services necessary to address J.W.'s unique needs, thus depriving him of critical educational opportunities, and substantially impairing his parents' ability to fully participate in the collaborative IEP process.

34. Finneytown had ample notice that J.W. might have disabilities qualifying him for an IEP and/or a FAPE under Section 504. Finneytown had an affirmative obligation to formally assess J.W. for disabilities using reliable, standardized, and statutorily proscribed methods. Finneytown had the duty not to discriminate against J.W. based on his disabilities. Finneytown also had the duty to provide J.W. equal and meaningful access to public education. Above all, Finneytown had the duty to refrain from imposing punishment or physical abuse against J.W. for exhibiting behaviors associated with his un-assessed disabilities, or in retribution for his parents' inquiries into and opposition to the conduct of Finneytown administrators, principals, teachers, or staff members.

35. Finneytown deliberately ignored the clear evidence requiring it to provide J.W. with special instruction, related services, accommodations, and modifications, but instead, insufficiently determined that J.W. was not eligible for an IEP or special education or services.

36. Finneytown has treated other children with disabilities in a similar manner and also deprived those children of necessary educational services.

Factual Summary

37. The plaintiffs are pursuing their administrative remedies, and have timely filed a Request for Due Process Hearing with Finneytown and the Ohio Department of Education. The plaintiffs have not yet exhausted those administrative remedies but file this

action in order to ensure that they meet the two-year statute of limitations for filing civil suit on certain of their claims.

38. All unlawful Finneytown conduct described in this complaint was approved or committed by school district officials delegated final policymaking authority to act as they did.

39. J.W. entered the Finneytown school system as a 5-year old kindergartner attending Brent Elementary School in the 2017-2018 school year.

40. Finneytown failed to identify J. W. as a student with disabilities, in need of an IEP, including special education and related services designed to meet Joseph White's unique needs, and to prepare him for further educational advancement. Finneytown has repeatedly failed to ensure that J.W. receives a FAPE.

41. Finneytown failed to identify and assess J.W. in order to determine the nature and extent of J.W. disabilities, and the special education and related services needed to ensure that he received a FAPE.

42. Finneytown failed to develop an IEP for J.W. designed to meet his unique needs, in order to accommodate his disabilities, and to ensure that he receives a FAPE.

43. Instead, Finneytown:

- (A) identified J.W. as a student needing remedial reading instruction during the 2016-17 school year, his first year of kindergarten;
- (B) claimed to have initiated Title I services with J.W. for remedial reading in the 2016-17 school year;
- (C) either did not provide any Title I remedial reading instruction to J.W. at any time or ceased providing the Title I remedial reading instruction to J.W. after

a few times;

- (D) required J.W. to repeat kindergarten for the 2017-2018 school year;
- (E) treated the manifestations of J.W.'s disabilities as behavioral problems;
- (F) punished and physically abused J.W. instead of providing identification, assessment, an IEP, and a FAPE;
- (G) unilaterally moved J.W. from kindergarten to first grade in November, 2017 following an incident of physical abuse against him by J.W.'s kindergarten teacher, Darla Fiedeldey, on October 2, 2017;
- (H) removed J.W. entirely from Brent Elementary School facilities at J.W.'s parents' request following a retaliatory incident of physical abuse perpetrated against him by Brent Elementary School's Principal, Lana Gerber, on November 3 or 10, 2017;
- (I) provided inadequate kindergarten instruction after November 11, 2017 by first, keeping J.W. out of school entirely for at least three weeks, then placing J.W. in a basement room of a different school building, where he was isolated from other students, and was tutored for varying times and days of the week by a rotating cast of "teachers," who were assigned to tutor J.W. as the "teachers'" schedules permitted or as the superintendent decided to schedule week to week;
- (J) entered into a partial settlement agreement with J.W.'s parents on August 7, 2018, in which the Finneytown Local School District agreed to pay an amount sufficient to cover J.W.'s tuition to attend a non-public school, Bethany School, plus the estimated cost of summer and after-school tutoring for J.W.

by a non-public school teacher, for one school year, 2018-2019; and

- (K) failed at any time to provide J.W.'s parents notice of their administrative rights under the IDEA, or any of its federal or state implementing statutes or regulations.

44. During this time period, J.W.'s educational performance (failing kindergarten) and behavior patterns (inattention, defiance, leaving classrooms, leaving the school building on one occasion) were clear indications that J.W. was likely a child with disabilities who needed to be assessed for disabilities.

45. On or about October 2, 2017, J.W. had left his classroom and was reportedly running around the school hallways. The defendant Fiedeldey, in an effort to control the behavior of then 6-year-old J.W., grabbed J.W. by the arm and dragged him like a rag doll 126 feet down the school hallway floor. J.W. yelled, "Stop! you're hurting me!" as the defendant Fiedeldey continued dragging him down the hallway floor.

46. It is well-settled that a schoolchild's right to personal security and to bodily integrity manifestly embraces the right under the 4th and 14th Amendments to the U.S. Constitution to be free from physical abuse at the hands of public school employees. The substantive component of the Due Process Clause protects students against abusive governmental power as exercised by a school.

47. The defendant Fiedeldey's conduct constituted child abuse, and the unlawful torts of assault, and assault and battery, all committed under color of law and under the authority of her position as school teacher.

48. The school district's attorney at a later disciplinary appeal hearing characterized the defendant Fiedeldey's conduct towards J.W. as "brazen and cavalier," and

an “egregious breach of the trust placed in her as at teacher in the District . . .”

49. The defendant Fiedeldey’s conduct was witnessed or partially witnessed by several other school staff members, however, who had very different views as to the propriety of the defendant Fiedeldey’s conduct.

50. Gina Brooks, the defendant Fiedeldey’s teaching assistant, witnessed the event and had no problem with the defendant Fiedeldey’s physical abuse of J.W. In her opinion, the defendant Fiedeldey acted properly.

51. Contract janitorial staff member Julie Rochelle Ake had seen J.W. “up and down the hall all day.” When she later witnessed the defendant Fiedeldey dragging J.W. down the hallway floor by his arm, she described J.W.’s behaviour as “twilight zone-ish,” that day, and J.W. generally as a “hot mess.” She did not believe the defendant Fiedeldey’s physical abuse of J.W. was inappropriate that day.

52. The defendant Fiedeldey herself confessed to Wonita Scott that this sort of thing “goes on all the time” at Brent Elementary School, and that she had witnessed the defendant Gerber similarly drag a student down the hallway floor to her office on a prior occasion.

53. The Principal of Brent Elementary School immediately prior to the defendant Gerber told the defendant Fiedeldey during the course of the later disciplinary action against her that if he had still been Principal “this [the disciplinary action against the defendant Fiedeldey for abusing J.W.] would never have happened.”

54. In addition to being principal of Brent Elementary School at the time, the defendant Gerber was also the Brent Elementary School Building 504/ADA Compliance Officer.

55.. The defendant Fiedeldey committed such conduct intentionally, wantonly, or recklessly, and is not immune from liability for such conduct under Ohio's governmental immunity statutes.

56. The defendant Fiedeldey's conduct, as evidenced by the express condoning of such conduct by school staff members, and the performance of the same or similar conduct the school Principal and 504/ADA Compliance Officer, the defendant Gerber, demonstrates that the defendant Fiedeldey acted in accordance with official school policies or practices established, condoned, or ratified by Finneytown and its officials with policy-making authority.

57. And contrary to the defendants' assumptions at the time, and assertions subsequently, the defendant Fiedeldey did cause physical harm and resulting serious psychological or emotional harm to J.W.

58. J.W. wet his pants that day and again that night, something he had long since outgrown. His pediatrician later diagnosed J.W. as potentially suffering from PTSD as a result of his experiences at Brent Elementary School.

59. On or about November 3, 2017, J.W. was standing in the school hallway.

60. The defendant Gerber emerged from her Principal's Office into the hallway, and seeming to spot J.W. standing down the hallway, strode toward him, approached him from behind, and knee buckled him to the floor.

61. The plaintiffs believe that the defendant Gerber specifically targeted 6-year-old J.W. in retaliation and retribution for complaints by J.W.'s parents about the defendant Fiedeldey's unlawful conduct, about the school policies and culture that apparently fostered and condoned such conduct, and about the fact that no one reported to them, as J.W.'s

parents, what the defendant Fiedeldey had done to J.W. until days after the assault and battery had occurred.

62. The defendant Gerber's conduct compounded the violation of J.W.'s clearly-established Constitutional right to personal security and bodily integrity that had already been committed by the defendant Fiedeldey the previous month.

63. The defendant Gerber's conduct constituted child abuse, and the unlawful torts of assault, and assault and battery, all committed under color of law and the authority of her school Principal position.

64. As a direct and proximate result of the defendant Gerber's conduct, 6-year-old J.W. has suffered physical harm, psychological harm, and emotional distress, all to his damage in an amount to be determined at trial, but in excess of \$25,000.00.

65. No one reported the defendant Fiedeldey's assault against J.W. until three days after it occurred.

66. Not long afterwards, the defendant Fiedeldey was suspended and her students reassigned to other kindergarten classrooms.

67. J.W.'s parents questioned J.W.'s reassignment to an abnormally enlarged kindergarten class with a teacher with whom they were unfamiliar.

68. In response, Finneytown unilaterally transferred J.W. into a first grade class, even though Finneytown had already determined that J.W. was not prepared for first grade yet, and was repeating kindergarten at the time.

69. J.W.'s parents questioned Finneytown's unilateral transfer of J.W., and demanded data or evidence that J.W. was ready for first grade.

70. In response, Finneytown removed J.W. from school altogether for at least

three weeks.

71. J.W.'s parents demanded that Finneytown make arrangements to take J.W. back into a school in an appropriately sized class, in his appropriate grade level, and taught by an appropriately qualified teacher.

72. In response, Finneytown placed J.W. in a basement room in a different school building, where he would be taught several days per week, for at most several hours on any day, by a rotating cast of teaching staff members, who may or may not have been qualified to teach, or to teach children with disabilities.

73. J.W. was isolated from any other school children, and became increasingly saddened and depressed as a result. He complained to his mother that he was lonely and didn't have any friends.

74. And due to the lack of any set class schedule, curriculum, and continuity of teachers, J.W. fell further and further behind in his educational progress.

75. Finally, Finneytown agreed to pay for the tuition for J.W. to attend Bethany School, a non-public school, for the following school year, and to pay for the cost of tutoring over the summer and the next school year, following which J.W. could return to the Finneytown school system.

76. Following Joseph White's admission to Bethany School, Bethany School teachers and administrators promptly identified Joseph White as a child who is potentially disabled and in need of special educational and related services.

77. In approximately October, 2018, Bethany School administrators advised Joseph White's parents to have Joseph White assessed by an appropriate educational assessment service to determine Joseph White's possible disabilities.

Joseph White's parents took Joseph White for an examination by his pediatrician, Angelique Gloster, MD, for psychological evaluation at Cincinnati Children's Hospital Medical Center, and for a thorough educational assessment at Powers Assessment Center.

78. Those examinations and assessments identified Joseph White as having Post-Traumatic Stress Disorder (PTSD); Attention Deficit Hyperactivity Disorder (ADHD); Adjustment Disorder; learning disabilities in all subject areas, and cognitive/intellectual/fluid reasoning disabilities.

79. More recently, Bethany School has referred Joseph White for assessment of speech and language impairments, including stuttering.

80. Finneytown has demonstrated that it is unable or unwilling to provide the appropriate identification, assessment, and IEP services necessary to afford J.W. the FAPE to which he is entitled.

81. J.W. is happy and beginning to thrive at Bethany School.

82. It would be extremely injurious for J.W.'s mental and emotional health to be forced to return to Finneytown school system, where he would be denied the FAPE to which he is entitled.

COUNT I

SECTION 504 AND AMERICANS WITH DISABILITIES ACT UNLAWFUL DISCRIMINATION

83. The plaintiffs incorporate each of the foregoing allegations as if fully restated herein.

84. J.W. is a qualified person with a disability as that term is used in both Section 504 and the ADA.

85. J.W. was excluded from equal access to a public education, and was denied the benefits of such participation, solely because he is an individual with disabilities.

86. Finneytown intentionally discriminated against J.W. on the basis of his disability by knowingly depriving J.W. of educational planning required by the IDEA.

COUNT II

FOURTEENTH AMENDMENT EQUAL PROTECTION VIOLATION UNDER 42 U.S.C. § 1983

87. Plaintiffs incorporate by reference the foregoing facts and allegations in this Complaint.

88. Finneytown deprived J.W. both of his right to be free from class-of-one discrimination and his right to be free from discrimination based on his disability. As a matter of official policy, and as approved by its officials with responsibility for these decisions, and as a matter of its custom of failing to provide special education to a number of students with disabilities, Finneytown intentionally, punitively, and arbitrarily and capriciously denied J.W. a timely special education.

89. As a direct result, J.W., Wonita Scott, and Donald White suffered severe emotional distress, loss of educational opportunity, loss of consortium, expenditure of funds, and other damages.

COUNT III

FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS VIOLATION

90. Plaintiffs incorporate by reference the foregoing facts and allegations in this Complaint.

91. J.W. has a constitutionally protected property right to an appropriate public

school education. This right cannot be removed without proper prior notice and an opportunity to be heard. Finneytown continuously deprived J.W. of an appropriate public school education without due process of law by unilaterally predetermining to withhold his eligibility for an IEP and the specially designed instruction, related services, accommodations, and modifications provided by an IEP.

92. Finneytown's predetermination that J.W. did not need special education violated J.W.'s, Wonita Scott's, and Donald White's procedural rights.

93. As a direct result, J.W., Wonita Scott, and Donald White suffered severe emotional distress, loss of educational opportunity, loss of consortium, expenditure of funds, and other damages.

COUNT IV

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

95. Plaintiffs incorporate by reference the foregoing facts and allegations in this Complaint.

96. Finneytown's actions targeting Plaintiffs were intended to cause emotional distress. Finneytown knew that its intentional refusals to provide a FAPE to J.W., and the school district's other intentional unlawful conduct, would be destructive for the child and his family.

97. As a direct result, J.W., Wonita Scott, and Donald White suffered severe emotional distress, loss of educational opportunity, loss of consortium, expenditure of funds, and other damages.

COUNT V

VIOLATION OF THE OHIO CONSTITUTION

98. Plaintiffs incorporate by reference the foregoing facts and allegations in this Complaint.

99. All of Finneytown's conduct violated the rights of J.W., Wonita Scott, and Donald White conferred by Article I, Sections 1 and 2, of the Ohio Constitution.

100. As a direct result, J.W., Wonita Scott, and Donald White suffered severe emotional distress, loss of educational opportunity, loss of consortium, expenditure of funds, and other damages.

COUNT VI

FOURTH AMENDMENT UNREASONABLE SEIZURE AND USE OF EXCESSIVE FORCE

101. Plaintiffs incorporate by reference the foregoing facts and allegations in this Complaint.

102. Finneytown's unauthorized conduct of dragging J.W. by one wrist 126' through the school hallways was an unconstitutional seizure and unconstitutional use of excessive force. The conduct was pursuant to school district official policy and was ratified by the policy makers for the school district.

103. As a result, J.W., Wonita Scott, and Donald White suffered severe emotional distress, loss of educational opportunity, loss of consortium, expenditure of funds, and other damages.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs demand judgment and relief against the defendants Finneytown, Fiedeldey, and Gerber as follows:

1. Compensatory damages for J.W., Wonita Scott, and Donald White in amounts to be determined at trial, and as the Jury deems just;
2. An award of attorneys' fees and costs of this action as authorized by law; and
3. Any and all other legal and equitable relief to which the plaintiffs may be entitled, and as the Court deems just.

Respectfully submitted,

/s/ Kenneth G. Hawley
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